IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.7.2007

Coram:

The Honourable Mr.Justice M.JAICHANDREN

S.A.No.1562 of 1996

Chinna Goundar .. Appellant
[1st defendant]

vs.

1. Ettayammal
2. Kaliannan
3. Palanisamy .. Respondents
[Plaintiffs and
2bd Defendant].

The Second Appeal has been filed against the judgment and decree, dated 7.9.1995, made in A.S.No.11 of 1995, on the file of the Sub Court, Sankari, allowing the appeal and setting aside the judgment and decree, dated 31.10.1994, made in O.S.No.62 of 1989, on the file of the District Munsif Court, Thiruchengode.

For Appellant : Mr.V.N.Mohanraj

For Respondents : Mr.S.Jayaraman for R1 and R2

JUDGEMENT

The Second Appeal has been filed against the judgment and decree, dated 7.9.1995, made in A.S.No.11 of 1995, on the file of the Sub Court, Sankari, allowing the appeal by setting aside the judgment and decree, dated 31.10.1994, made in O.S.No.62 of 1989, on the file of the District Munsif Court, Thiruchengode.

2. The plaintiffs had filed the suit in O.S.No.62 of 1989, praying for the relief of permanent injunction restraining the defendants from in any way interfering with the peaceful possession and enjoyment of the suit property.

3. The first defendant in the said suit is the appellant in the present second appeal.

4. The brief facts of the case, as stated by the plaintiffs, are as follows:

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The suit property belongs to the first plaintiff as she had purchased the same under a Deed, dated 12.7.1962, registered as document No.1615/62, marked as Exhibit A.1. The vendor, under the said document, had got the title by a Deed, dated 21.6.1961, registered as document No.1614/61, from Rangaiya Gounder and others, marked as Exhibit A.2. Under the said documents, specific share with boundaries have been purchased. The first plaintiff was in enjoyment of the property without let or hindrance, openly and in derogation of the interest of the others. The second plaintiff is the husband of the first plaintiff and he has been assisting his wife in cultivating crops in the suit property. The suit property is in possession and enjoyment of both the plaintiffs.

5. The plaintiffs have been enjoying their share confined to the boundaries specified in the Deeds. Even before the first plaintiff had purchased the suit property, a stone revetment had been constructed to mark its boundaries. The plaintiffs have been paying the kists for the suit property. The chitta, adangal and patta are in the name of the first plaintiff. The defendants are the owners of the adjacent land on the eastern and southern sides of the suit property. In the sale deed, dated 12.7.1962, the southern boundary is shown to be the property of Poosari Rangaiya Gounder. Poosari Rangaiya Gounder is the father of the first defendant. The first defendant had also purchased some properties which is the eastern boundary of the suit property. In the sale deed, dated 12.7.1962, the new survey number in which the suit property lies is shown to be 148/2.

6. In the recent survey of the suit land, it was found that the land purchased by the first plaintiff, under the document, dated 12.7.1962, is 1 Hectare. During the sub- division of the suit property, based on the surveys, the survey Number of the suit property has been shown as 148/2A. Since the plaintiffs are enjoying the property within the boundaries marked by stone revetment, the defendants cannot have any right or interest in the suit property. The defendants are not affected, since no lands belonging to the defendants have been brought under the possession and enjoyment of the plaintiffs, based on the re-survey done by the authority concerned. Since the defendants had been attempting to disturb the peaceful possession and enjoyment of the suit property by the plaintiffs, the suit had been filed by the plaintiffs in O.S.No.62 of 1989.

7. In the written statement filed by the first defendant, the claims made by the plaintiffs had been denied. It has been stated that the first plaintiff had purchased only 1.58½ acres in Survey No.148/2. The defendants are having a pathway right over the suit property. The plaintiffs have manipulated to get the suit property sub divided as Survey No.148/2A, during the updating survey.

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8. The defendants have also denied the existence of stone revetment to determine the boundaries of the suit property. The claim of the plaintiffs that they are cultivating the various crops like, paddy, ground-nut and cholam in the suit property is false. The plaintiffs are claiming a larger extent than what has been mentioned in the sale deed by which the suit property had been purchased. Further, the plaintiffs are denying the pathway right of the defendants over the suit property. Since the defendants had no notice about the updating survey, they have appealed to the Revenue Divisional Officer, Sankari, to cancel the sub-division, made under the said survey and the same is pending enquiry. The plaintiffs are having shares in Survey No.148/2, along with the defendants, as the co-owners. Therefore, there cannot be a decree of permanent injunction in favour of the plaintiffs against the other co-owners of the suit property. In such circumstances, the prayer by the plaintiffs for the relief of permanent injunction against the defendants is to be dismissed.

9. Based on the averments made in the plaint as well as in the written statement, the trial Court had framed the following issues for consideration:

> 1. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for in the suit?
> 2. Whether the defendants have the right of pathway in the suit property?
> 3. Whether the defendants are the co-owners of the suit property?
> 4. What reliefs the plaintiffs are entitled to?"

10. The trial Court had found that there is no dispute with regard to the fact that the suit property had been purchased by the first plaintiff. The trial Court had also found that there was no mention about the stone revetment in the sale deed, dated 12.7.1962, marked as Exhibit A.1. Further, the plaintiffs had stated in the plaint, filed in O.S.No.62 of 1989, that they have purchased 1.58½ acres by the documents marked as Exhibits A.1 and A.2. Therefore, the trial Court had found that the issue to be decided is with regard to the extent of lands purchased by the plaintiffs. The plaintiffs had claimed that the boundaries of the suit property have been properly given in the sale deeds and therefore, the extent of the lands comprised within the said boundaries have to be taken to be belonging to the plaintiffs, even though it is more than the extent mentioned in the said sale deeds. The trial Court had held that it is the actual extent purchased by the plaintiffs that would

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count and that the plaintiffs would be entitled only to the said extent. Therefore, the plaintiffs cannot claim to be in possession and enjoyment of a larger extent as claimed by them in the suit O.S.No.62 of 1989. Hence, the trial Court had rejected the claim of the plaintiffs that it is only the boundaries that should be taken into account for determining the extent of land owned by them.

11. The trial Court had also held that the principle that the boundaries should prevail over the extent cannot be in favour of the plaintiffs in the particular facts and circumstances of the present case. It was held that only in the absence of definite materials to show the actual extent intended to be sold, the boundaries should prevail over the extent and if there is clear evidence as to the intention of the parties, with reference to the extent conveyed, then it is the extent that should prevail over the boundaries.

12. Further, the trial Court had also held that there was nothing shown on behalf of the plaintiffs to contradict the claim of the defendants that they are the co-owners in the suit property in S.No.148/2. The trial Court had held that the reliefs sought for by the plaintiffs in the suit O.S.No.62 of 1989 cannot be granted. Based on such findings, the trial Court had dismissed the suit filed by the plaintiffs. However, the trial Court had left open, without deciding the claim of the defendants to their right of pathway in the suit property.

13. Aggrieved by the judgment and decree of the trial Court, made in O.S.No.62 of 1989, the plaintiffs had filed an appeal in A.S.No.11 of 1995, on the file of the Sub-Court, Sankari. Based on the contentions raised on behalf of the parties concerned and on the evidence available on record, the lower appellate Court had framed the following points for consideration:-

> "1. Whether the appellants are entitled to the relief of permanent injunction as sought for in the suit?
>
> 2. Whether the respondents are entitled to the right of pathway in the suit property?
>
> 3. What other reliefs the appellants are entitled to?"

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14. The lower appellate Court had found that even though the defendants in the suit had claimed that they had the right of pathway in the suit property, they could not prove the same either by oral or documentary evidence. In Exhibit B.1, filed on behalf of the defendants, it is seen that they had the right of pathway in Survey Nos.149 and 150. The defendants had not been in a position to show that they had the said right, either in survey No.148/2 or in

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148/2A.

15. The lower appellate Court had also found that the defendants were parties to the suit in O.S.No.220 of 1984, on the file of the District Munsif Court, Tiruchengode, praying for the relief of permanent injunction against the defendants therein with regard to the use of the pathway to reach the Survey No.148/2B. In the sketch annexed to the decree passed in the said suit, the alleged pathway in Survey Nos.148/2 and 148/2A had not been shown. Since no other document has been filed on behalf of the defendants in support of their claim relating to the existence of a pathway in Survey No.148/2, the claim made by the defendants cannot be accepted. Since the defendants have accepted the boundaries, the extent contained within the boundaries cannot be disputed, especially, when there is no allegation against the plaintiffs that they had encroached on the properties of the defendants or of any one else.

16. Further, the lower appellate Court had found that the defendants have not been able to prove their claim that they are the co-owners in the suit property to deny the claim of the plaintiffs for the relief of permanent injunction against them. On the other hand, the plaintiffs have filed sufficient documents to show that they have purchased the suit property by way of sale deeds marked as Exhibits before the trial Court and that the plaintiffs have also shown that they have been in possession and enjoyment of the suit properties, boundaries of which had been clearly shown. Further, the defendants have not been able to show that they had the right of pathway in the suit property or that they had better title in the said property. In such circumstances, the lower appellate Court had allowed the appeal, by setting aside the judgment and decree passed by the trial Court.

17. Aggrieved by the judgment and decree of the lower appellate Court, dated 7.9.1995, made in A.S.No.11 of 1995, the present second appeal has been filed by the first defendant in the suit O.S.No.62 of 1989.

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18. The second appeal had been admitted on the following substantial questions of law:

> "1) Whether the lower appellate Court has erred in granting injunction particularly when the description of suit property given in plaint does not disclose the boundaries?
>
> 2. Whether the learned Sub-Judge, has erred in not seeing that when the recital in the title deeds and circumstances of the case showed

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only 1.58½ acres and was substantiated by oral and documentary evidence as to the intention of the parties with reference to the extent, then the extent should prevail over the boundaries?"

19. The learned counsel appearing on behalf of the appellant had contended that the suit praying for the relief of permanent injunction cannot be maintainable without the relief for a declaration.

20. It has been contended that the plaintiffs have not given the correct boundaries of the suit properties. It was also contended that the patta granted under the updating register resurvey cannot grant title on the plaintiffs which they did not possess. Since the first plaintiff had purchased only 1.58½ acres by way of a sale deed, dated 12.7.1962, marked as Exhibit A.1, the plaintiffs cannot be said to have title to a larger extent based on the updating register patta.

21. The learned counsel appearing on behalf of the first and second respondents had submitted that the plaintiffs have been in enjoyment of the entire extent of the suit property within the boundaries clearly marked by stone revetment. The boundaries have been clearly given by the plaintiffs and the entire property contained within the said boundaries have been in their possession and enjoyment for a long period of time. The defendants have not been in a position to show that they are having the right of passage through the plaintiffs' suit property, either by oral or by documentary evidence. Once the plaintiffs have shown that they have been in possession of the suit property, they are entitled to the relief of permanent injunction, as prayed for in the suit O.S.No.62 of 1989.

22. On analysing the rival contentions and based on the evidence available on record, this Court is of the considered view that the findings of the lower appellate Court are correct. Once it is seen that the plaintiffs have been in possession and enjoyment of the suit property and when the boundaries have been clearly shown, the plaintiffs are entitled to the relief of permanent injunction sought for by them. On the other hand, the appellant in the present Second Appeal, who was the first defendant in the suit, had not shown any proof or evidence to show that the defendants in the suit had the right of pathway in the suit property. Even though the sale deeds, through which the first plaintiff has purchased the property show that only an extent of 1.58½ acres had been sold, it is clear from the evidence on record that the plaintiffs have been in possession and enjoyment of a larger extent of property, as shown in the updating register patta.

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23. In such circumstances, it is clear that the lower appellate Court has appreciated the facts and circumstances of the case in their proper perspective and had arrived at the right conclusions.

24. For the reasons stated above, this Court finds that there is no ground for interference with the judgment and decree rendered by the lower appellate Court, dated 7.9.1995, made in A.S.No.11 of 1995. Therefore, the second appeal is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To:

1. The Subordinate Judge, Sankari,
2. The District Munsif, Thiruchengode
3. The Record Keeper, VR Section, High Court, Madras.
+ 1 CC To Mr. V.N.Mohanraj, Advocate SR NO.47118
+ 1 CC To Mr. S.Jayaraman, Advocate SR NO.47489

S.A.No.1562 of 1996

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